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ADOPTED

MEMORANDUM

September 28, 1989

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: BRUCE SINGAL, SPECIAL COUNSEL

SUBJECT: ARTICLE 31A, DISCLOSURE OF BENEFICIAL INTERESTS

SUMMARY: This Memorandum details the responses to public comments made in connection with the Public Hearing and comment period regarding Article 31A.

On September 14, the Boston Redevelopment Authority (BRA) held a public hearing on proposed Article 31A to the Boston Zoning Code, Disclosure of Beneficial Interests. At that time, the BRA also authorized a period for the receipt of public comments to run until Friday, September 22.

The most detailed comments the BRA received were from an ad hoc group of Boston lawyers specializing in real estate development law. The comments of this ad hoc committee revolved primarily around the administrative requirements which the proposed article may impose on institutional lenders to development projects, and the impact of the regulation on purchasers or lenders from actions of prior parties over which they have no control.

Certain revisions may be made to proposed Article 31A which would protect institutional lenders and ease administrative requirements while not diminishing the amendment's ability to achieve its purposes. These revisions, embodied in the attached draft of Article 31A, are as follows:

- o Exemption for mortgages in favor of institutional lenders, and standby commitments for mortgage financing from institutional lenders;
- o Exemption for applicants who do not have a reasonable opportunity to comply with Article 31A prior to the issuance of the first building permit for a proposed project;
- o No disclosure of the amount of a beneficial interest required, if such interest is less than 1%;
- o Exemption for owners of less than: 10% of a publicly traded company broadened to include owners of less than 10% of a mutual insurance company owned by policy holders, regulated banks or insurance companies; and shareholders of a limited equity or nonprofit housing cooperative;

- o Provision for cure of failure to file or falsification of Disclosure Statement by filing of Disclosure Statement;
- o Provision for not jeopardizing permits issued for projects for which an institutional lender has committed and disbursed funds for substantial construction, or for which a building permit allowing funding and commencement of construction has been issued; and
- o A three-year limitation on the time period within which an enforcement action can be brought, providing essentially a ten year statute of limitations.

The revisions outlined above serve primarily to provide greater security to institutional lenders while not reducing Article 31A's effectiveness. Staff recommends the following vote:

VOTED: That the Authority hereby authorizes the Director to petition the Zoning Commission for adoption of proposed Article 31A of the Zoning Code, Disclosure of Beneficial Interests, substantially in the form attached hereto.

TO THE ZONING COMMISSION OF THE CITY OF BOSTON:

The Boston Redevelopment Authority petitions to amend the text of the Boston Zoning Code, as established under Chapter 665 of the Acts of 1956 as amended, as follows.

By inserting after Article 31 the following article:

**ARTICLE 31A
DISCLOSURE OF BENEFICIAL INTERESTS**

SECTION 31A-1. **Statement of Purpose.** This Article establishes a process for the full disclosure of beneficial interests in large-scale development projects which require zoning relief. The purposes of such disclosure include without limitation the following: to inform public decision-makers and the public-at-large of the identity and extent of the interest held by all persons having any beneficial interest in property which is subject to public review and approval by the Boston Redevelopment Authority, the Zoning Commission, or the Board of Appeal, and thereby improve municipal land use decisions and foster public understanding and trust in the process of such review and approval; and to provide a process under which officials making land use decisions can identify and avoid conflicts of interest.

SECTION 31A-2. **Definitions.** For the purposes of this article only, the following words and phrases have the meanings indicated:

1. "Applicant" means any Person having a Beneficial Interest in a Proposed Project subject to the provisions of this article or the authorized agent of any such Person.

2. "Beneficial Interest" means any legal or equitable direct or indirect ownership interest, whether as an individual or through a partnership, corporation, trust, or other legal entity, or otherwise, or a contractual right to any such ownership interest, whether or not contingent, other than a mortgage in favor of or a standby commitment for mortgage financing from (i) a corporation, partnership or trust, the stock of which is listed for sale to the public with the Securities and Exchange Commission, or with a comparable regulatory body in a foreign country; (ii) a mutual insurance company or other entity owned by its policy holders; or (iii) an insurance company, bank or other entity subject to control, regulation or examination by any state or federal regulatory agency or by a comparable regulatory body in a foreign country.
3. "Disclosure Statement" means the statement required by Section 31A-4 of this article.
4. "Person" means an individual, partnership, corporation, trust, and other legal entity.
5. "Proposed Project" means the erection or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit.

6. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

SECTION 31A-3. Applicability. This article applies to any Proposed Project which requires Zoning Relief and which falls into any of the following categories:

(a) construction of a building or structure having a gross floor area of one hundred thousand (100,000) or more square feet; (b) enlargement or construction of a building or structure so as to increase its gross floor area by one hundred thousand (100,000) or more square feet; or (c) establishment or change of the uses of gross floor area of one hundred thousand (100,000) or more square feet.

However, any Proposed Project for which Zoning Relief has been granted by the Board of Appeal prior to the first notice of hearing before the Zoning Commission for the adoption of this article shall be exempt from the provisions of this article. The Applicant for the following Proposed Projects shall be exempt from the provisions of this article, unless the Applicant has a reasonable opportunity to comply with the provisions of this article prior to issuance of the first building permit for such a Proposed Project:

1. Any Proposed Project for which application to the Zoning Commission or appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for the adoption of this article, provided that such Zoning Relief has been or is hereafter granted by the Zoning Commission or the Board of Appeal, as appropriate, pursuant to such application or appeal; and

2. Any Proposed Project for which application for approval of a Development Impact Project Plan, Planned Development Area Development Plan, or Planned Development Area Master Plan has been submitted to the Boston Redevelopment Authority prior to the first notice of hearing before the Zoning Commission for adoption of this article, provided that such Development Impact Project Plan, Planned Development Area Development Plan, or Planned Development Area Master Plan has been or is hereafter approved by the Boston Redevelopment Authority pursuant to such application, whether or not such application or such Development Impact Project Plan, Planned Development Area Development Plan, or Planned Development Area Master Plan is thereafter modified or amended.

SECTION 31A-4. Disclosure Statements of Persons Having Beneficial Interests in Proposed Projects.

1. **Disclosure of Beneficial Interests in Proposed Projects.** The Zoning Commission and Board of Appeal may grant Zoning Relief for a Proposed Project subject to this article only if the Applicant for such Proposed Project has filed a statement, signed under penalties of perjury, with the City Clerk, with the Executive Secretary of the Boston Redevelopment Authority, with the Executive Secretary of the Zoning Commission in instances in which the Zoning Commission shall act on the application for Zoning Relief, and with the Executive Secretary of the Board of Appeal in instances in which the Board of Appeal shall act on the application for Zoning Relief disclosing the true names and addresses of all Persons who have a Beneficial Interest in such Proposed Project, the amount of their Beneficial Interest accurate to within one-tenth of one percent, if such

interest exceeds one percent (1%), and, for the initial Disclosure Statement only (unless subsequently modified), the names and addresses of all firms and professional corporations employing attorneys, real estate brokers, architects, engineers, planners, surveyors, and all agents who have acted on behalf of any of the foregoing with respect to the application for the Zoning Relief.

The provisions of this section shall not apply to: (a) owners of 10% or less of the ownership interest in (i) a corporation, partnership or trust, the stock of which is listed for sale to the public with the Securities and Exchange Commission, or with a comparable regulatory body in a foreign country;

(ii) a mutual insurance company or other entity owned by its policy holders;

(iii) an insurance company, bank or other entity subject to control, regulation or examination by any state or federal regulatory agency or by a

comparable regulatory body in a foreign country; (b) shareholders of a

limited equity or non-profit housing cooperative; and (c) any other entity

which may be deemed to be exempt by the Boston Redevelopment Authority by regulation adopted from time to time.

2. **Form of Disclosure Statement.** The statement required by this section shall be in the form shown in Appendix A to this article. If the Applicant filing the statement required by this section is a corporation, the statement shall be signed by a duly authorized officer thereof.

3. **Circulation of Disclosure Statement.** Once filed by the Applicant, the Disclosure Statement shall be circulated to all members of the Zoning Commission, Board of Appeal, and Boston Redevelopment Authority who are eligible to vote upon the application for Zoning Relief by their respective

Executive Secretaries, provided that, the failure of any such Executive Secretary to circulate the Disclosure Statement as provided herein shall not affect the validity of any Zoning Relief nor subject the Applicant to the penalties set forth herein.

SECTION 31A-5. Public Records. The City Clerk shall make the Disclosure Statements required by Section 31A-4 available to the public upon request.

SECTION 31A-6. Updating Disclosure Statements. The Applicant shall file with the City Clerk updated Disclosure Statements containing all the information required in Section 31A-4 annually from the date of the first filing of a Disclosure Statement. The updated Disclosure Statements shall specifically identify the differences in such information from that provided in the immediately preceding Disclosure Statement filed in connection with such Proposed Project. An updated Disclosure Statement shall be filed for a period of seven (7) years from the date of the first filing; provided that for any year in which there has been no material change in the identity of Persons having a Beneficial Interest in the Proposed Project, as disclosed in the last Disclosure Statement filed, a notice in writing by the Applicant to the City Clerk to that effect shall satisfy the Applicant's obligations under this section.

SECTION 31A-7. Penalties.

1. **Failure to File Updated Disclosure Statement; Security of Permits Issued.** If the Applicant of a Proposed Project which receives Zoning Relief fails subsequently to file an updated Disclosure Statement as required by Section 31A-6, the Commissioner of Inspectional Services may take any

action provided in law or equity to enforce a provision of this article. However, prior to seeking such enforcement, the Commissioner of Inspectional Services shall notify the Applicant, and any other Person who has a Beneficial Interest in the Proposed Project (including in addition mortgagees) listed on the most recent Disclosure Statement filed by the Applicant and who has previously notified the Commissioner of Inspectional Services to send notice to such Person, by certified mail of such intended enforcement, and advise said Applicant and each such Person that if the updated Disclosure Statement is not filed within forty-five (45) days of receipt of the notice, the Commissioner of Inspectional Services shall consider revoking the Proposed Project's building or occupancy permit as a result of such failure to file, or any other remedies available at law or in equity. If, within such forty-five (45) day period, any Person to whom the notice of failure to file was sent provides evidence to the Commissioner of Inspectional Services of due diligence in seeking the filing of an updated Disclosure Statement, the Commissioner of Inspectional Services shall not take any other action to enforce the provisions of this article and shall not revoke any building or occupancy permit for the Proposed Project, and no such enforcement action or revocation may take place so long as the due diligence to seek compliance is being undertaken. The failure of any Applicant to file any updated Disclosure Statement required by this article may be fully and completely cured by the filing by such Applicant at any subsequent time of an updated Disclosure Statement which sets forth the information required under Section 31A-4 as of the time when such filing was originally due or by the filing by any other Applicant of an updated Disclosure Statement which sets forth the information required under

Section 31A-4 as of the time when such filing was originally due to the best knowledge of such Applicant. For the purpose of this regulation, "due diligence" shall conclusively mean, but not be limited to, the diligent prosecution of a civil action to compel compliance with the requirement to file an updated Disclosure Statement.

2. **Falsification of Disclosure Statement.** Any Person who willfully files a Disclosure Statement required by this article which is false in a material matter shall be subject to the penalties of perjury pursuant to G.L. c. 268, Section 1A, and any other applicable criminal and civil penalties. If the Commissioner of Inspectional Services becomes aware that a court of competent jurisdiction has found that such a false statement in a material matter has been willfully filed, the Commissioner of Inspectional Services may take any action provided in law or equity to enforce a provision of this article. However, prior to seeking any such enforcement, the Commissioner of Inspectional Services shall notify the Applicant, and any other Person who has a Beneficial Interest in the Proposed Project (including in addition mortgagees) listed on the most recent Disclosure Statement filed by the Applicant and who has previously notified the Commissioner of Inspectional Services to send notice to such Person, by certified mail of such intended enforcement, and advise said Applicant and each such Person that if the true Disclosure Statement is not filed within forty-five (45) days of receipt of the notice, the Commissioner of Inspectional Services shall consider revoking the Proposed Project's Zoning Relief or building or occupancy permit as a result of such falsification, or any other remedies available at law or in equity. If, within such forty-five (45) day period, any Person to whom the

notice of falsification was sent provides evidence to the Commissioner of Inspectional Services of due diligence in seeking the filing of a true Disclosure Statement, the Commissioner of Inspectional Services shall not take any other action to enforce the provisions of this Article and shall not revoke any Zoning Relief or building or occupancy permit for the Proposed Project, and no such revocation may take place so long as the due diligence to seek compliance is being undertaken. The failure of any Applicant to file any true Disclosure Statement required by this article may be fully and completely cured by the filing by such Applicant at any subsequent time of a true Disclosure Statement which sets forth the information required under Section 31A-4 as of the time when such filing was originally due or by the filing by any other Applicant of an updated Disclosure Statement which sets forth the information required under Section 31A-4 as of the time when such filing was originally due to the best knowledge of such Applicant. For the purpose of this regulation, "due diligence" shall conclusively mean, but not be limited to, the diligent prosecution of a civil action to compel compliance with the requirement to file a true Disclosure Statement. Notwithstanding the foregoing, the Zoning Relief and any building or occupancy permits issued shall not be jeopardized by reason of any violation of the provisions of this paragraph after the Zoning Relief has been granted and either (i) a corporation, partnership or trust, the stock of which is listed for sale to the public with the Securities and Exchange Commission, or with a comparable regulatory body in a foreign country; (ii) a mutual insurance company or other entity owned by its policy holders; or (iii) an insurance company, bank or other entity subject to control, regulation or examination by any state or federal regulatory agency or by a comparable

regulatory body in a foreign country, has loaned funds for the substantial construction of the Proposed Project in reliance thereon, and has filed a notice with the Commissioner of Inspectional Services verifying the disbursement of funds for such substantial construction; or a building permit allowing funding and commencement of construction has been issued by the Inspectional Services Department.

3. Any action by the Commissioner of Inspectional Services or any other party in connection with any violation of this article shall be commenced only within three years next after the cause of action accrues. A cause of action shall be deemed to accrue with respect to any Disclosure Statement on the date when such Disclosure Statement is required to be filed hereunder.

SECTION 31A-8. Regulations. The Boston Redevelopment Authority may promulgate regulations to administer this article. Such regulations may provide other circumstances where due diligence shall be conclusively found, including, without limitation, providing for circumstances where the interests of bona-fide purchasers and lenders shall not be jeopardized by reason of such nondisclosure if they exercise reasonable efforts to cure the noncompliance involved.

SECTION 31A-9. Severability. The provisions of this article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this article.

Appendix A

Disclosure Statement Concerning Beneficial Interest Required by Article 31A of the Boston Zoning Code

- (1) Location: _____
- (2) Applicant: _____
- (3) I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have a Beneficial Interest (including the amount of their Beneficial Interest accurate to within one-tenth percent if such interest exceeds 1%) in the above-listed property are listed below in compliance with the provisions of Article 31A of the Boston Zoning Code.

NAME AND RESIDENCE OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENTAGE INTEREST</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- (4) The undersigned also acknowledges and states that except as stated below, none of the above-listed individuals is an official elected to public office in the Commonwealth of Massachusetts, nor is an employee of the State Department of Capital Planning and Operations.
- (5) I hereby state, under the penalties of perjury, that the names and addresses of all firms and professional corporations employing attorneys, real estate brokers, architects, engineer, planners, and surveyors, and all other agents who have acted on behalf of any of the foregoing with respect to the application on the above-listed property are listed below in compliance with the provisions of Article 31A of the Boston Zoning Code.

NAME AND ADDRESS OF ALL FIRMS AND PERSONAL CORPORATIONS,
AND AGENTS WHO HAVE ACTED ON SAID APPLICATION:

NAME

ADDRESS

SIGNED under the penalties of perjury.

Signature: _____

Date: _____